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IN THE

Supreme Court of the United States

October Term, 1965

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JOHN F. DAVIS, CLERK

No. 843

PAUL GINSBURG, *Petitioner*

v.

BONN KRAUS GINSBURG and JOHN PAUL GINSBURG, Minors, by their Guardian Ad Litem, BETTY K. GINSBURG, *Respondents*

PETITION FOR REHEARING
and
MOTION TO REMAND

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The Petition for Rehearing of Paul Ginsburg, Petitioner, respectfully represents:

1. On February 21, 1966 this Honorable Court entered an Order denying the fully supported and self-sustaining Petition for Writ of Certiorari, which Petition was *unopposed.*

2. Had this Honorable Court granted the Petition for Writ of Certiorari, the relief afforded your Petitioner would be precisely the same as in remanding the cause.

3. It is respectfully submitted that in denying the Petition, this Honorable Court overlooked the Record fact that there had never been an adjudication on the merits of any of the issues presented in the Arizona District Court or in the Court of Appeals for the Ninth Circuit, and the resulting conflicts entered. Thus your Petitioner presents important authority in support of this Petition for Rehearing from the dissenting Opinion by Mr. Justice Frankfurter (447-463) in the case of *Dick v. New York Life Insurance Co.*, 359 U.S. 437, wherein an applicable pronouncement (452) by the late Mr. Chief Justice Taft was affirmed, that a litigant is entitled to two chances—one in the District Court and another in the Court of Appeals. This Constitutionally inspired pronouncement issued from the mandate of the *Evarts Act* and the "*Judges' Bill*", presently being invoked by your Petitioner who never had a single chance.

4. Your Petitioner, who never had a chance, has actually been a litigant without a Court. It is respectfully submitted since all that he seeks from this Honorable Court is a chance, that he asks (with right) very little, and especially in view of the seriousness of the unadjudicated issues involved.

5. When the Court of Appeals incorrectly asserted (21) that "Too late, he attempted an appeal, our No. 16,768", it erroneously overlooked or misapprehended the Record fact that the said prior appeal (wrongfully dismissed) was not only timely but in full compliance with all procedural Rules. It further overlooked or misapprehended the point that even if that dismissal were technically justified, said dismissal nonetheless should not have been employed to obstruct justice in the instant appeal, in view of the pronouncements of this Honorable Court in *Foman v. Davis*, 371 U.S. 178 cited in the Petition for Writ of Certiorari.

6. Pursuant to paragraph 1 of Rule 19, this Honorable Court was justified in denying certiorari as such, but in so doing it overlooked the point that the result was a most unfortunate and unconstitutional deprivation of Petitioner's Federally guaranteed rights under the Constitution including, but not limited to, his right to a Day in Court; and, of course, his right to a chance; his rights under the Due Process Clause; and even his civil rights to work and earn a living in his chosen profession, to be compensated for services rendered and work done in the course of his chosen profession, and his right to litigate with due process of law to protect and enforce those rights.

WHEREFORE, your Petitioner prays that this Honorable Court will enter an order granting this Petition for Rehearing.

PAUL GINSBURG
Counsel for Petitioner

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay. I further certify that it is restricted to the grounds specified in paragraph 2 of Rule 58.

PAUL GINSBURG
Counsel for Petitioner

MOTION TO REMAND

The Petitioner, Paul Ginsburg, respectfully moves this Honorable Court to enter an order opening and setting aside its Order entered on February 21, 1966 denying his Petition for Writ of Certiorari *(United States of America,*

Petitioner, v. The Ohio Power Company, 353 U.S. 98, 1957); then upon the granting of the petition for writ of certiorari, vacating the Judgment of the Court of Appeals sought to be reviewed; and thereupon reversing the said judgment sought to be reviewed and remanding (28 U.S.C., section 2106) the above entitled cause to the United States District Court for the District of Arizona at Phoenix for further proceedings *(United States of America, Petitioner, v. Shotwell Manufacturing Company, et al.*, 355 U.S. 233, 1957, citing and relying upon *Communist Party v. Subversive Activities Control Board*, 351 U.S. 115, and *Mesarosh v. United States*, 352 U.S. 1); requiring the District Court to adjudicate on the merits all of the unadjudicated issues as required in the performance of its judicial function *(United States v. International Building Co.*, 345 U.S. 502, 506 and see also 354 U.S. 393); and in support hereof, it is averred:

1. It is apparent from the Record that the lower Courts failed completely to perform the required judicial functions. For example, the summary denial of the Motion for Adjudication on the Merits of the Unadjudicated Issues, which the Court of Appeals declined to review and remand, in and of itself establishes this allegation.

2. In the case of *United States v. United Mine Workers*, 330 U.S. 258, Mr. Justice Frankfurter stated in his Opinion (p. 310) that in such cases these Courts would not be acting as a court. They "would be a pretender to, not a wielder of, judicial power"; and Mr. Justice Rutledge stated in his Opinion (p. 343), "No man or group is above the law, nor is any beyond its protection". *In re Yamashita*, 327 U.S. 1, dissenting opinion, 41. Your petitioner is justified in arguing that the said Justices would have made the same assertions regarding the lower Courts herein.

3. On the same 21st day of February 1966, when certiorari was denied herein it, as well as the motion to remand was granted in the case of *Dyson v. Maryland*, No. 455, Misc., on Petition for Writ of Certiorari to the Court of Appeals of Maryland. It is respectfully submitted that the same reasoning therein could have been applied herein, resulting in remand to the Arizona District Court.

4. The District Court is the only forum for making the adjudications sought herein. The refusal of the District Court to have adjudicated on the merits the issues involved, deprived your petitioner of his right to an effectual appeal, because appellate and reviewing Courts customarily decline to review unadjudicated issues. It was argued before the Court of Appeals that the minimal relief for the appellant should have been a remand of the cause to the District Court. Its erroneous dismissal of the appeal, instead of the performance of its judicial function, could have been the impelling cause for the denial of certiorari. It is respectfully submitted, however, that in the face of the various denials of your petitioner's guaranteed rights under the Constitution and laws of the United States and the conflicts entered thereby, such denial will be set aside and a remand of this cause will be ordered.

5. A meticulous regard for the fair administration of justice in the Federal System requires the granting of this Motion to Remand in the public interest; and particularly because the result will effectuate the necessary and indispensable resolving of the dangerous conflicts entered herein, a restoration of the sanctity of respectable contracts, and the essential respect for the law and orderly procedure which has been destroyed in the lower Courts for future reference.

Respectfully submitted,

PAUL GINSBURG
Counsel for Petitioner